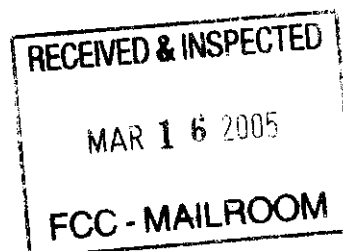


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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 01-107
Table of Allotments,) RM-10057
FM Broadcast Stations.)
(Mount Pleasant and Hemlock, Michigan))

To: Chief, Media Bureau

NOTICE OF SUBSTITUTION OF PARTIES

NM Licensing, LLC ("NML"), the current licensee of WCEN-FM, Channel 233C1, Mount Pleasant, Michigan, by its undersigned attorney, hereby informs the Commission that NML acquired said station on January 6, 2003, pursuant to BALH-20021106ABP, and respectfully requests that NML be substituted as licensee of record in any future proceedings involving the above-referenced matter.

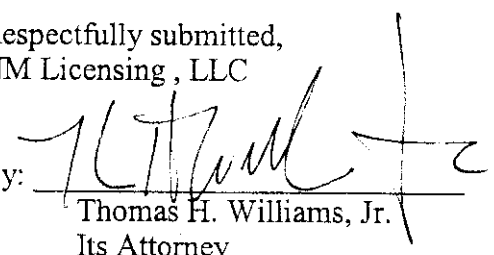
Additionally, NML hereby informs the Commission of NML's decision to adopt and approve the "Opposition To Petition For Reconsideration" filed by Wilks License Co., LLC on January 11, 2002, and attached hereto as Exhibit "A" (the "Wilks Motion").

CONCLUSION

For the reasons stated in the Wilks Motion, NML respectfully requests that the Commission promptly deny and dismiss the "Petition For Reconsideration" filed by MacDonald Broadcasting Company on November 19, 2001, and attached hereto as Exhibit "B".

Respectfully submitted,
NM Licensing, LLC

By:


Thomas H. Williams, Jr.
Its Attorney

Leibowitz & Associates, P.A.
One SE Third Avenue
Suite 1450
Miami, FL 33131
(305) 530-1322

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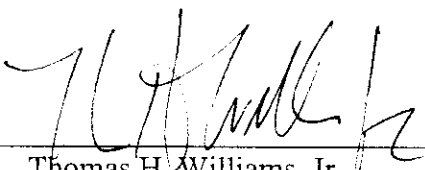
Date: March 15, 2005

CERTIFICATE OF SERVICE

I, Thomas H. Williams, Jr., do hereby certify that on this 15th day of March 2005, I mailed by first-class United States mail, postage prepaid, copies of the foregoing "NOTICE OF SUBSTITUTION OF PARTIES" to the following:

Christopher D. Imlay, Esq.
Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016
Counsel for MacDonald Broadcasting Company

Richard R. Zaragoza, Esq.
Veronica D. McLaughlin, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
Counsel for Wilks Licensee Co., LLC



Thomas H. Williams, Jr.

Exhibit "A"

BEFORE THE DOCKET FILE COPY ORIGINAL

Federal Communications Commission

WASHINGTON, D.C.

RECEIVED
JAN 11 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Mount Pleasant and Hemlock, Michigan))

MM Docket No. 01-10
RM-10057

To: Chief, Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Wilks License Co., LLC ("Wilks"), licensee of WCEN-FM, Channel 233C1, Mount Pleasant, Michigan, by its undersigned attorneys, hereby opposes the Petition for Reconsideration of the Commission's decision to reallocate Channel 233C1 from Mount Pleasant, Michigan to Hemlock, Michigan and to modify the license of WCEN-FM to specify Hemlock as its community of license filed by the MacDonald Broadcasting Company ("MacDonald").¹ In its Petition, MacDonald reiterates the claim from its earlier Comments in response to the Notice of Proposed Rule Making in this proceeding that the reallocation and modification of the WCEN-FM license constitutes a *de facto* reallocation of WCEN-FM to the city of Saginaw. As the Commission recognized, however, in its Report and Order granting the reallocation, Hemlock is a community deserving of a first local aural transmission service, and reallocation of Channel 233C1 to Hemlock was entirely consistent with the Commission's rules governing changes in community of license. For these reasons, MacDonald's Petition should be promptly denied and dismissed.

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¹ This Opposition is timely filed. See *Petition for Reconsideration of Action in Rulemaking Proceeding*, 66 Fed. Reg. 67252 (2001).

Discussion

As it did in its initial Comments in this proceeding, MacDonald once again claims that the proposed city of license change is a reallocation from Mount Pleasant to Saginaw and criticizes the Commission for failing to require a Huntington-Tuck analysis. As Wilks pointed out in its response to MacDonald's earlier Comments, however, Hemlock is located outside the Saginaw Urbanized Area. Moreover, WCEN-FM's 70 dBu contour does not cover 50% or more of the Saginaw Urbanized Area. It is well settled that a Huntington-Tuck analysis is not required where, as here, a licensee is neither migrating to a location within an Urbanized Area nor to a location from which the 70 dBu contour of its station will cover 50% or more of the Urbanized Area. See, e.g., *Lampasas and Leander, Texas*, 15 FCC Rcd 6113 (2000); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999); *Shelby and Dutton, Montana*, 14 FCC Rcd 9514 (1999).² Ignoring this precedent, MacDonald continues to blindly insist that a Huntington-Tuck analysis is indeed required. None of the cases it cites, however, support this contention. All of those cases involve applicants who sought to locate in or migrate to communities of license located within an Urbanized Area³ or to sites from which they would place a city grade

² In fact, even if WCEN-FM's 70 dBu contour did cover 50% or more of the Saginaw Urbanized Area, this fact would be irrelevant. It is also well-settled that no migration to an Urbanized Area will have occurred and, thus, no Huntington-Tuck analysis will be required where the proposed new community of license is outside the Urbanized Area and the station's transmitter site, though permitting the station to place a 70 dBu contour over at least 50% of the Urbanized Area, will not change. See, e.g., *Kankakee and Park Forest, Illinois*, DA 01-700, MM Docket No. 99-330, released March 23, 2001; *Georgetown and Garden City, South Carolina*, 12 FCC Rcd 13394, ¶ 4 (1997).

³ See e.g., *St. Augustine and Neptune Beach, Florida*, DA 01-2487, MM Docket No. 01-101, released October 26, 2001 (no change in transmitter site but Neptune Beach located within the Jacksonville Urbanized Area); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990) (Richmond located within the San Francisco-Oakland Urbanized Area); *Faye & Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988) (holding that the Urbanized Area "is an appropriate definition of 'community' under Huntington" and "the party seeking to have us apply Huntington to a community outside the Urbanized Area must affirmatively show that there is sufficient dependence on the central city to support a public interest finding that the given community's local transmission needs can be

Footnote continued on next page

signal over more than 50% of the Urbanized Area.⁴ Thus, the cases are irrelevant. While MacDonald correctly points out that the staff did not apply the Tuck criteria in this case, it erroneously insists that the staff was required to do so. This case simply does not meet the criteria for application of a Huntington-Tuck analysis, that is, migration to a community located within an Urbanized Area or to a site from which the station will place a city grade contour over 50% or more of the Urbanized Area. Thus, the staff committed no error in failing to apply the analysis.

Moreover, MacDonald has failed to demonstrate why the Commission's precedent should be ignored in this case and a Huntington-Tuck analysis performed. MacDonald only alleges that Wilks seeks to specify a smaller community of license closer to Saginaw and that the WCEN-FM main studio is located in Saginaw. See Petition for Reconsideration at 2. But these facts alone are insufficient to mandate a Huntington-Tuck analysis. See *Exmore and Cheriton, Virginia*, 16 FCC Rcd 10880 (2001) (no Tuck showing required where station merely moving closer to a larger, more urban area but neither locating to a community within an Urbanized Area or to one from which the station would cover 50% or more of an Urbanized Area with a city grade signal). Moreover, the location of a station's main studio is not determinative of the station's community of license. The staff was only required to determine whether Wilks' proposal would result in a preferential arrangement of allotments by comparing the existing

Footnote continued from previous page

adequately satisfied by stations licensed to other communities within the larger metropolitan area").

⁴ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (relocation to Headland would permit applicant's station to place a city grade signal over all of the Dothan Urbanized Area); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (1996) (relocation to Newcastle would permit applicant's station to place a city grade signal over almost all of the Oklahoma City Urbanized Area).

arrangement of allotments with those proposed. This is precisely what the staff did; thus, it committed no error.

The staff correctly found that the grant of Wilks' proposal would permit Hemlock, a community of approximately 1,585 people (2000 Census),⁵ to receive a first local service without depriving Mount Pleasant of local service. As amply demonstrated by Wilks in its prior pleadings in this proceeding, this conclusion is entirely consistent with and, in fact, dictated by Commission precedent.

Conclusion

For these reasons, Wilks respectfully requests that the Commission promptly deny and dismiss MacDonald's Petition for Reconsideration.⁶

Respectfully submitted,

WILKS LICENSE CO., LLC

By: 

Richard R. Zaragoza
Veronica D. McLaughlin

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000

Dated: January 11, 2002

⁵ Hemlock had a population of 1,601 people at the 1990 Census.

⁶ MacDonald also reiterates its request that the staff investigate the location of the WCEN-FM main studio to determine whether Wilks is in violation of the Commission's main studio rule. As the staff correctly noted in the Report and Order in this proceeding, however, the action taken granting Wilks' change of community proposal has no bearing on Wilks' pending Request for Forbearance from application of the main studio rule and is not appropriately considered in the context of a rule making proceeding. See Report and Order at n.6.

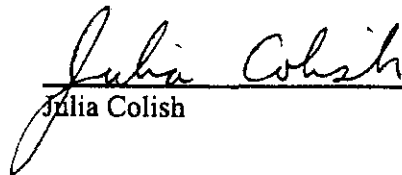
CERTIFICATE OF SERVICE

I, Julia Colish, do hereby certify that on this 11th day of January 2002, I mailed by first-class United States mail, postage prepaid, copies of the foregoing "OPPOSITION TO PETITION FOR RECONSIDERATION" to the following:

Roy Stewart, Chief*
Mass Media Bureau
Federal Communications Bureau
Portals II
445 12th Street, S.W.
Room 2-C347
Washington, D.C. 20554

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
Portals II
445 12th Street, S.W.
Room 3-A266
Washington, D.C. 20554

Christopher D. Imlay, Esq.
Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016
Counsel for the MacDonald Broadcasting Company


Julia Colish

*Via Hand Delivery

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RM-10057

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Commission's attention the patently obvious efforts of Wilks to "move-in" WCEN to Saginaw. MacDonald established in this proceeding in its comments that Wilks has already located its studio for WCEN in Saginaw, in violation of Section 73.1125 of the Commission's Rules. Wilks, in its reply comments, did not deny that fact. They merely argued that Wilks had, at the beginning of this year, filed a "Request for Forbearance" of the application Main Studio rule. That pleading remains adjudicated to the present day. It is ludicrous for Wilks to suggest that its intention in pursuing this reallocation is premised on an intention to serve the city of Hemlock, which is considerably smaller (1,601 persons) than is Mt. Pleasant (25,946 persons). Rather, it is an effort to move the station into the Saginaw market. Hemlock is a mere ten miles from Saginaw; Mt. Pleasant is approximately 50 miles away. Wilks abandoned Mt. Pleasant some time ago. Wilks' move-in city of Saginaw has a population of more than 130,000, including the township population.

2. Hemlock is therefore quite clearly a suburb of the larger city of Saginaw. If the allotment of Channel 233C1 is moved to Hemlock, WCEN could legally locate its main studio in Saginaw (which it cannot do now, even though it is actually doing so). The only conceivable reason for the city of license change is to permit identification of WCEN with the City of Saginaw, and to legitimize what Wilks has already done.

3. Yet, in the face of the foregoing showing of MacDonald, the Commission did no more than analyze this matter under the standard Section 307(b) criteria, found that it would create a first transmission service at Hemlock under criterion (3) thereof, and concluded thereby that the allocation proposal of Wilks was a preferential arrangement of allotments pursuant to the Change of Communities procedures. The Allocations Branch did not even address the necessary criteria

established by *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988). Under *Tuck*, it is apparent that it is not sufficient to merely find that a suburban community has indicia of community status. Rather (and especially where it is apparent that the move to a suburban community adjacent to an urbanized area is merely a subterfuge for a move to the larger city), the Commission requires an analysis to determine whether the suburban community is *sufficiently independent* from the larger community as to justify a first transmission service preference. See, *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd. 10342 (1995); *RKO General (KFRC)*, 5 FCC Rcd. 3222 (1990); *St. Augustine and Neptune Beach, Florida*, DA 01-2487, released October 26, 2001.

4. Under those authorities, three criteria are considered in making a first local service preference determination: (1) signal coverage, i.e. the degree to which the station would provide coverage not only to the suburban community (Hemlock) but to the adjacent metropolis as well; (2) the size and proximity of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city. None of those issues was addressed in the R&O. MacDonald suggests that Hemlock is largely dependent on Saginaw for services. In *Ada, Newcastle and Watonga, Oklahoma*, the Commission applied the *KFRC* and *Tuck* factors by reviewing eight criteria, none of which is addressed in this case, to-wit:

- (a) The extent to which community residents work in the larger metropolitan area, rather than the specified community.
- (b) Whether the smaller community has its own newspaper or other media that cover the community's local needs and interests.
- (c) Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area.
- (d) Whether the specified community has its own local government and elected officials.

(e) Whether the smaller community has its own telephone book provided by the local telephone company or zip code.

(f) Whether the community has its own commercial establishments, health facilities, and transportation systems.

(g) The extent to which the specified community and the central city are part of the same advertising market.

(h) The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries.

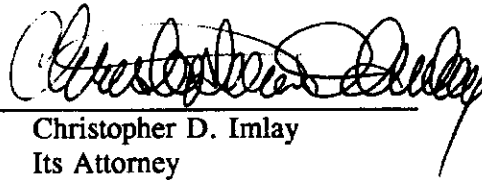
5. MacDonald's arguments in this proceeding were not even considered, or if they were, there was no reasoned analysis of them. The Commission could not have concluded that Hemlock is an independent community without determining whether a majority of the *Tuck* factors demonstrate that the community is distinct from the urbanized area. The R&O was therefore incomplete and insufficient in its justification of the allocation. Where, as here, there is a "smoking gun" establishing that the motivation of the petitioner is other than what it represents to the Commission, a more strenuous analysis of the applicable *Tuck* factors was called for. Instead, the Allocations Branch considered none of the applicable tests at all.

Therefore, the foregoing considered, The MacDonald Broadcasting Company respectfully requests that the Mass Media Bureau reconsider and reverse the Report and Order in this proceeding, and that Channel 233C1 not be reallocated from Mt. Pleasant to Hemlock. Further, it is again requested that the Commission investigate the current location of the main studio of WCEN and determine whether the licensee is in violation of Section 73.1125(a) of the

Commission's rules and if so, what the proper sanction for this entirely intentional rule violation should be.

Respectfully submitted,

THE MACDONALD BROADCASTING COMPANY

By: 
Christopher D. Imlay
Its Attorney

Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016
(202) 686-9600

November 19, 2001

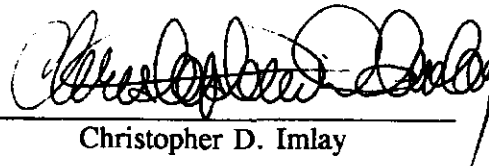
CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify under penalty of perjury that I caused to be served, this 19th day of November, 2001, via United States Mail, postage prepaid, a copy of the "PETITION FOR RECONSIDERATION" on the following:

Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
445-Twelfth Street, S.W., Room 2-C347
Washington, D.C. 20554

John A. Karousos, Chief
Allocations Branch,
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 3-A266
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Richard R. Zaragoza, Esquire
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Shaw, Pittman
2300 N Street, N.W.
Washington, D.C. 20037-1128
Counsel for Petitioner



Christopher D. Imlay